

C O P Y

in opinion

417A

February 18, 1967

Honorable Samuel Green
Chairman, Committee on Judiciary
House of Representatives
Concord, New Hampshire

Dear Sir:

In a recent conference you have requested the views of this office concerning the constitutionality of certain aspects of House Bill No. 134, An Act relative to motor vehicle driver training.

You note, first, that the bill provides that certain of the monies arising from the sale of initial number plates should be expended in the giving of instruction in driver training. You inquire if such is a proper expenditure of funds as derived in view of the provisions of Constitution of New Hampshire, Part Second, Article 6-a. We respond in the affirmative.

It is clear that monies derived from the sale of initial number plates come within the Article cited. In such circumstances such monies must be

"used exclusively for the construction, reconstruction and maintenance of public highways within this state, including the supervision of traffic thereon and payment of the interest and principal of obligations incurred for said purposes . . ."

While the question has never been passed upon by the Supreme Court, it is our view that the instruction those persons who will create and constitute traffic on the public ways falls within the concept of "supervision of traffic . . ." within the meaning of the Constitutional provision. The Supreme Court would undoubtedly assign a broad latitude to the General Court in making its determination of what constitutes "supervision of traffic"; and it is believed that the Legislature's determination once made would not lightly be disturbed.

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- 2 -

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Your further question has to do with that part of House Bill No. 124 which provides for the distribution of the public monies to private (including parochial) schools as well as to public schools. It is understood that you desire to know whether private schools are proper recipients of public funds. This inquiry is also answered in the affirmative.

In two separate opinions rendered to the 1955 Legislature the Supreme Court had occasion to discuss the legal concepts involved in a question such as the one now posed. In Opinion of the Justices, 99 N.H. 519, the Court gave as its opinion that public funds might be used for scholarships and grants in aid to hospitals offering approved training in basic professional nursing without regard to the auspices under which the institutions might be conducted or to the religious beliefs of their managements, provided such funds were devoted exclusively to the public purpose of nurses' training and were devoid of sectarian doctrine and purposes. And in Opinion of the Justices, 99 N.H. 536, further comments were made with respect to the use of public funds by private agencies. The test which the Court deemed applicable to determine the legality of any such expenditure in any case is found in the inquiry whether the expenditure will accomplish a public purpose. Thus if the purpose sought to be accomplished is a proper one for the expenditure of public funds, the mere fact that the expenditure will be made by a private agency - which might not itself qualify as a recipient of public funds for its own purposes - does not render the expenditure illegal.

So in the case of House Bill No. 124, driver training being a proper public objective, that objective may properly be attained through the instrumentality of private agencies.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW/aml

cc: Council of State Governments